

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

ANDREW GROSS,

Plaintiff,

v.

Case Number 06-13714-BC  
Honorable Thomas L. Ludington

BUREAU OF PRISONS; TERRE HAUTE  
U.S. PRISON MEDICAL STAFF;  
MARK A. BEZY, Warden; ATTORNEY  
GENERAL ALBERTO GONZALES;  
WAYNE COUNTY JAIL MEDICAL STAFF;  
UNITED STATES MARSHALS SERVICE;  
HARLEY LAPPIN, Director, Bureau of Prisons,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION, OVERRULING  
OBJECTIONS, AND DENYING MOTION TO PROCEED WITHOUT PREPAYMENT  
OF FEES AND COSTS**

Presently before the Court are the plaintiff's objections to a report issued by Magistrate Judge Charles E. Binder on September 13, 2006 recommending that the plaintiff's application to proceed *in forma pauperis* on his claims should be denied. The magistrate judge based his recommendation on the "three strikes" provision contained in the Prison Litigation Reform Act (PLRA), which states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

The magistrate judge noted that the plaintiff has filed seven prisoner civil rights cases since

2001 and four of those cases were dismissed as frivolous or as failing to state a cognizable legal claim. *See* Case Numbers 02-74123; 02-74850; 06-12820; 06-13065. He therefore concluded that the plaintiff had accrued four strikes, and there was no allegation contained in the complaint that the plaintiff was in imminent danger as required by the PLRA.

In his objections, the plaintiff speaks of his indigence and his belief that he has been wronged by not receiving medical attention. He, however, does not address the fact that nowhere has he alleged he is immediate danger of serious physical injury. Consequently, after reviewing this matter *de novo*, the Court cannot discern a basis for permitting the plaintiff to proceed *in forma pauperis*.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation is **ADOPTED**, the plaintiff's objections [dkt # 5] are **OVERRULED**, and the plaintiff's motion to proceed without prepayment of fees and costs [dkt # 2] is **DENIED**.

It is further **ORDERED** that the plaintiff shall pay the filing fee on or before **January 18, 2006**. In the event the plaintiff fails to pay the fee, the case will be dismissed without prejudice.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: December 14, 2006

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 14, 2006.

s/Tracy A. Jacobs  
TRACY A. JACOBS